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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Protecting the Right to Housing in Mega-Projects

I. Introduction

The right to adequate housing is frequently violated by state actors through the implementation of large-scale development and infrastructure projects, or *mega-projects,* including mining, logging, oil-extraction, and *mega-events*, such as the FIFA World Cup and the Olympics. Those who live in the vicinity of such large-scale projects have very little say on whether these undertakings, supposedly for the utilitarian public benefit, get implemented or not. Any compensation provided to displaced persons is often insufficient and does not adequately cover costs related to relocation. Furthermore, in the context of mega-events, housing conditions for laborers provided in preparation for the event are grossly inadequate. This statement will address the victims of mega-projects, which may include not only those evicted or displaced, but also the workers constructing the projects.

Various regional and international instruments establish international human rights laws that protect the rights to adequate housing, to be free from forced eviction, to information and consultation, and to adequate compensation. The right to adequate housing is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is supported through General Comments No. 4 and 7 on forced evictions, as well as by various resolutions. For example, in 2010, the Human Rights Council passed resolution 13/10 on the right to housing and mega-events. Resolution 13/10 called upon governments to "… assess the impact on the affected population throughout the process…"[1] and to "… explore alternatives to evictions and to undertake any evictions in accordance with the domestic legal framework…"[2] According to the report of the Special Rapporteur on adequate housing, while international human rights obligations "tend to focus more on the role of national level governments," local and subnational governments need to effectuate such obligations for implementation of access to adequate housing to be more effective.[3] One example is the California housing element law. Such a subnational state law is recommended by HRA in locations of mega-projects and events with huge displacement impacts.

This written statement will include comparative examples from Latin America, Qatar, and California. The right to adequate housing must be a prerequisite for the implementation of mega-projects and the hosting of mega-events. Mega-projects, often produced for the preparation of mega-events, impact those who are displaced and evicted as well as those who work on the projects themselves. Subnational and local laws must be tailored such that the right to adequate housing is not compromised.

II. Mega-Project Victims: Displaced Persons & Project Workers

A. Mexico

Displaced and inadequately compensated Mexican urban populations have little specified available recourse when faced with a mega-project in their locale. The only particular domestic avenue for affected populations to consider is *amparo*, a procedural means of injunction designed to protect the fundamental rights preserved in the Constitution, which include the right to property (Art. 27), and in international treaties to which Mexico is a party. As such, if the right to property were to be violated by Mexico through a mega-project or event, it would be presumed that *amparo* could be invoked effectively to halt such activities. While this may relate to recent mega-projects in Mexico City, for example, such as the Metro Line 12 or the Supervía Poniente highway, no identifiable reparations have been evident, particularly as urban "megaprojects" are generally difficult to be considered admissible by the domestic courts and the Inter-American Commission of Human Rights (IACHR) alike. [4] The widespread effects of such projects in a metropolis are often difficult to contain, and consequently, identifiable victims are difficult to ascertain for purposes of standing in both national and international courts.

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[1] Adequate housing as a component of the right to an adequate standard of living in the context of mega-events, A/HRC/RES/13/10, ¶ 3(a) (2010).

[2] *Id.* At ¶ 3(f).

[3] Report of the Special Rapporteur on Adequate Housing, A/HRC/28/62 (2015).

[4] *Metropolitan Nature Preserve v. Panama, Case 11.533*, IACHR (2003).

B. Qatar

Qatar, the host nation selected for FIFA World Cup 2022, has proposed to build nine new stadiums and renovate three in time for the mega-event. Foreign migrant workers, primarily from South Asia, are constructing each of these stadium projects. According to Qatar's Law 14 of 2004, private sector workers are required to have limited hours, receive paid annual leave, receive timely payment of monthly wages, and enjoy protection from health and safety standards.[5] However, authorities fail to enforce this, and through the *kafala* (sponsorship) system, which ties a migrant worker's legal residence and passport possession to his employer, workers are virtually barred from leaving the country without their sponsor's permission. Furthermore, due to unsanitary labor camp conditions and the lack of implementation of safety requirements on the field of work, it has been reported that Nepalese workers in Qatar have been dying at a rate of one per day.[6] The case of Qatar exemplifies: the intersection of mega-projects and mega-events, workers who are denied adequate housing, and the consequences of the absence of enforcement of both domestic and international obligations.

III. National & Subnational Legislative Solutions

A. Chile

In the watershed Inter-American Court case *Claude Reyes v. Chile*, the Chilean State was found internationally responsible for its refusal to provide information related to a forest industrialization project to Marcel Claude Reyes, as well as the lack of an adequate and effective resource to challenge such a decision. The Court ultimately determined that the facts of the case constituted a violation of Article 13 (freedom of thought and expression), thus the petitioners were eligible for reparations. The Court also held that within six months of the judgment, the Chilean State was obligated to provide necessary legislative measures to guarantee the right of access to state-held information, and that it must provide training for public authorities and state agents on this right.

In response, Chile successfully promulgated and published in the Official Gazette the Law No. 20,285 *Ley de Transperencia y Acceso a la Información del Estado*, by which "the Administration is obliged to provide information in the widest practicable matter, excluding only constitutional or legal exceptions."[7] The State also created the Council of Transparency, which punishes violations of this law, and implemented training activities concerning the new law of hundreds of state officials and lawyers. Since the Chilean State fully complied with the judgments, the Court officially closed the case in 2006. In 2008, the Inter-American Commission " . . . applaud[ed] the progress made by the State in the instant case and the spirit of cooperation between the representative of the victims and the State in relation to the reparations ordered by the Court."[8] Hence, Chile's progress is a paradigm of how a nation can take affirmative steps to adjust its domestic legislation in order to comply with its international obligations vis-à-vis mega-project implementation.

B. California, United States of America

California law requires each city and county to adopt a general plan containing seven mandatory elements, one of which is housing. The housing element, required to be updated every eight years, is subject to detailed statutory requirements and mandatory review by the California Department of Housing and Community Development (HCD).[9] The law, first enacted in 1969, is a tool used by the state in anticipation of future housing needs resulting from a projected significant increase in population. Each local government is obligated to demonstrate how it plans to meet existing and projected housing needs of people at all income levels. Each city must show it can accommodate a certain number of very low, low, moderate, and market-rate housing units.[10] If its housing element complies with state law, a city may qualify for various state funds; however, failure to do so opens up a city to potential litigation from housing advocates. Thus, noncompliance is effectively addressed.

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[5] Human Rights Watch, World Report 2014: Qatar.

[6] Pattison, *Revealed: Qatar's World Cup Slaves*, 2013 http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves

[7] *Claude Reyes et al v. Chile*, IACtHR, Case 12.108, p. 5 (2006).

[8] *Id.*, (*Monitoring Compliance with Judgment) (2008*) p. 8.

[9] CA GOV Code Section 65580-65589.8 http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65580-65589.8

[10] *Id.* at 65583 (C)(2).

In line with the 2015 report of the Special Rapporteur on adequate housing, California's law is an example of how subnational governments can direct local governments to guarantee adequate housing for its populations. HRA urges state parties to encourage the implementation of effective bottom-up approaches via subnational governments to guarantee the right to adequate housing, particularly vis-à-vis displaced victims of mega-project production.

III. Recommendations

HRA requests that the HRC:
(1) Recognize the need for national and subnational legislation to ensure the right to adequate housing in context of mega projects and events, including those of evicted or displaced persons and workers;
(2) Urge the Special Rapporteur on the Right to Housing to monitor the topic of mega-projects, including in the context of mega-event preparations, as they relate to the right to adequate housing; and
(3) Urge state party governments to affirmatively protect this right through appropriate domestic legislation.

HRA urges all state parties undergoing preparations for mega-events and mega-projects to take affirmative steps to implement and enforce effective national and subnational legislation to ensure the right to adequate housing.